

**Executive Summary – Enforcement Matter – Case No. 43937**  
**Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.**  
**RN104256227**  
**Docket No. 2012-0774-EAQ-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

EAQ

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Tuscany Heights Units 1 thru 4, located on the west side of United States Highway 281, and on the north side of Mountain Lodge Road, San Antonio, Bexar County

**Type of Operation:**

Residential development

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 8, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,225

**Amount Deferred for Expedited Settlement:** \$1,845

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$7,380

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 43937**  
**Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.**  
**RN104256227**  
**Docket No. 2012-0774-EAQ-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** February 3, 2012

**Date(s) of NOE(s):** March 12, 2012

***Violation Information***

1. Failed to immediately suspend regulated activities and notify the TCEQ San Antonio Regional Office upon discovery of sensitive features on Lot 12. Specifically, it was noted that Respondent did not suspend regulated activities and notify the TCEQ San Antonio Regional Office of the discovery of two additional solution features on Lot 12 on January 20 and 27, 2012 respectively [30 TEX. ADMIN. CODE § 213.5(f)(2) and Edwards Aquifer Water Pollution Abatement Plan (“WPAP”) No. 13-04042103A, Standard Conditions No. 12].

2. Failed to implement best management practices and measures to prevent chipped rock from discharging into Sensitive Features Nos. 1 through 4 [30 TEX. ADMIN. CODE § 213.5(b)(4)(C)(iii) and WPAP No. 13-04042103A, Standard Conditions 2].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent has implemented the following corrective measures:

- a. By January 30, 2012, submitted notifications to the San Antonio Regional Office of the two additional sensitive features discovered on Lot 12;
- b. On February 3, 2012, ceased operations;
- c. Received approval of the Special Feature Closure Plans on February 3 and 5, 2012 respectively; and
- d. By April 2, 2012, used a vacuum truck and manual excavation to remove chipped rock from the sensitive features and refill the features with flowable fill material.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 43937  
Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.  
RN104256227  
Docket No. 2012-0774-EAQ-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jeremy Escobar, Enforcement Division,  
Enforcement Team 3, MC R-14, (361) 825-3422; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** David Pfeifer, President, Tuscany Heights, LLC, 2525 C Street, Suite  
500, Anchorage, Alaska 99503

**Respondent's Attorney:** N/A



|       |          |             |           |             |         |  |
|-------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 19-Mar-2012 | Screening | 10-Apr-2012 | EPA Due |  |
|       | PCW      | 10-Apr-2012 |           |             |         |  |

|  |   |
|--|---|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |
| Respondent                             | Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd. |
| Reg. Ent. Ref. No.                     | RN104256227   |
| Facility/Site Region                   | 13-San Antonio  |
| Major/Minor Source                     | Major   |

|                                 |                 |                       |                    |
|---------------------------------|-----------------|-----------------------|--------------------|
| <b>CASE INFORMATION</b>         |                 |                       |                    |
| Enf./Case ID No.                | 43937           | No. of Violations     | 2                  |
| Docket No.                      | 2012-0774-EAQ-E | Order Type            | 1660               |
| Media Program(s)                | Edwards Aquifer | Government/Non-Profit | No                 |
| Multi-Media                     |                 | Enf. Coordinator      | Jeremy Escobar     |
|                                 |                 | EC's Team             | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0             | Maximum               | \$25,000           |

|  |  |
|--|--|
| <b>Penalty Calculation Section</b>   |  |
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>  | <b>Subtotal 1</b> \$11,250                                   |
| <b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>   |  |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.     |  |
| <b>Compliance History</b>  | <b>2.0%</b> Enhancement <b>Subtotals 2, 3, &amp; 7</b> \$225 |
| Notes  | Enhancement for one NOV with dissimilar violations.          |
| <b>Culpability</b>   | <b>0.0%</b> Enhancement <b>Subtotal 4</b> \$0                |
| Notes  | The Respondent does not meet the culpability criteria.       |
| <b>Good Faith Effort to Comply Total Adjustments</b>   | <b>Subtotal 5</b> \$2,250                                    |
| <b>Economic Benefit</b>  | <b>0.0%</b> Enhancement* <b>Subtotal 6</b> \$0               |
| Total EB Amounts   | \$132  |
| Approx. Cost of Compliance   | \$16,404   |
| *Capped at the Total EB \$ Amount  |  |
| <b>SUM OF SUBTOTALS 1-7</b>  | <b>Final Subtotal</b> \$9,225                                |
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>  | <b>0.0%</b> <b>Adjustment</b>                                |
| Reduces or enhances the Final Subtotal by the indicated percentage.  |  |
| Notes  |  |
| <b>Final Penalty Amount</b> \$9,225  |  |
| <b>STATUTORY LIMIT ADJUSTMENT</b>  | <b>Final Assessed Penalty</b> \$9,225                        |
| <b>DEFERRAL</b>  | <b>20.0%</b> Reduction <b>Adjustment</b> -\$1,845            |
| Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.) |  |
| Notes  | Deferral offered for expedited settlement.                   |
| <b>PAYABLE PENALTY</b>   | <b>\$7,380</b>   |

Screening Date 10-Apr-2012

Docket No. 2012-0774-EAQ-E

PCW

Respondent Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

Policy Revision 3 (September 2011)

Case ID No. 43937

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104256227

Media [Statute] Edwards Aquifer

Enf. Coordinator Jeremy Escobar

**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )  | 0                 | 0%      |
|                               | Other written NOVs   | 1                 | 2%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )  | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )                              | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government ( <i>number of counts</i> )   | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events ( <i>number of events</i> )   | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )     | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )  | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

**Adjustment Percentage (Subtotal 2)** 2%>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary**Compliance  
History  
Notes

Enhancement for one NOV with dissimilar violations.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 2%>> **Final Compliance History Adjustment****Final Adjustment Percentage \*capped at 100%** 2%

Screening Date 10-Apr-2012

Docket No. 2012-0774-EAQ-E

PCW

Respondent Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

Policy Revision 3 (September 2011)

Case ID No. 43937

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104256227

Media [Statute] Edwards Aquifer

Enf. Coordinator Jeremy Escobar

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.5(f)(2) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 13-04042103A, Standard Conditions No. 12

Violation Description

Failed to immediately suspend regulated activities and notify the Texas Commission on Environmental Quality ("TCEQ") San Antonio Regional Office upon discovery of sensitive features on Lot 12. Specifically, it was noted that the Respondent did not suspend regulated activities and notify the TCEQ of the discovery of two additional solution features on Lot 12 on January 20 and 27, 2012 respectively.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

|                | Major | Harm<br>Moderate | Minor |
|----------------|-------|------------------|-------|
| Release Actual |       |                  |       |
| Potential      |       | x                |       |

Percent 15.0%

## &gt;&gt; Programmatic Matrix

|               | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| Falsification |       |          |       |

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 2

16 Number of violation days

|                            |              |   |
|----------------------------|--------------|---|
| mark only one<br>with an x | daily        |   |
|                            | weekly       |   |
|                            | monthly      |   |
|                            | quarterly    | x |
|                            | semiannual   |   |
|                            | annual       |   |
|                            | single event |   |

Violation Base Penalty \$7,500

Two quarterly events are recommended (one quarter for each feature) from the January 20, 2012 (date first feature discovered) to the February 3, 2012 compliance date.

## Good Faith Efforts to Comply

25.0% Reduction

\$1,875

|               | Before NOV | NOV to EDRP/Settlement Offer |
|---------------|------------|------------------------------|
| Extraordinary |            |                              |
| Ordinary      | x          |                              |
| N/A           |            | (mark with x)                |

Notes The Respondent came into compliance on February 3, 2012.

Violation Subtotal \$5,625

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,775

This violation Final Assessed Penalty (adjusted for limits) \$5,775

# Economic Benefit Worksheet

**Respondent** Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

**Case ID No.** 43937

**Reg. Ent. Reference No.** RN104256227

**Media** Edwards Aquifer

**Violation No.** 1

**Percent Interest** 5.0 **Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

|                          |      |             |            |      |     |     |
|--------------------------|------|-------------|------------|------|-----|-----|
| Equipment                |      |             | 0.00       | \$0  | \$0 | \$0 |
| Buildings                |      |             | 0.00       | \$0  | \$0 | \$0 |
| Other (as needed)        |      |             | 0.00       | \$0  | \$0 | \$0 |
| Engineering/construction |      |             | 0.00       | \$0  | \$0 | \$0 |
| Land                     |      |             | 0.00       | \$0  | n/a | \$0 |
| Record Keeping System    |      |             | 0.00       | \$0  | n/a | \$0 |
| Training/Sampling        |      |             | 0.00       | \$0  | n/a | \$0 |
| Remediation/Disposal     |      |             | 0.00       | \$0  | n/a | \$0 |
| Permit Costs             |      |             | 0.00       | \$0  | n/a | \$0 |
| Other (as needed)        | \$50 | 20-Jan-2012 | 3-Feb-2012 | 0.04 | \$0 | n/a |

**Notes for DELAYED costs**

Estimated cost to notify TCEQ San Antonio Regional Office of the discovery of two additional sensitive features on Lot 12 and cease operations. Date Required is the date the first sensitive feature was discovered and the Final Date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

|                               |  |  |      |     |     |     |
|-------------------------------|--|--|------|-----|-----|-----|
| Disposal                      |  |  | 0.00 | \$0 | \$0 | \$0 |
| Personnel                     |  |  | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  | 0.00 | \$0 | \$0 | \$0 |

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$50

**TOTAL**

\$0



Screening Date 10-Apr-2012

Docket No. 2012-0774-EAQ-E

PCW

Respondent Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

Policy Revision 3 (September 2011)

Case ID No. 43937

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104256227

Media [Statute] Edwards Aquifer

Enf. Coordinator Jeremy Escobar

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 213.5(b)(4)(C)(iii) and WPAP No. 13-04042103A, Standard Conditions No. 2

Violation Description

Failed to implement best management practices and measures to prevent chipped rock from discharging into Sensitive Features Nos. 1 through 4.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

|                | Major | Moderate | Minor |
|----------------|-------|----------|-------|
| Release Actual |       |          | X     |
| Potential      |       |          |       |

Percent 15.0%

## &gt;&gt; Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 1

59

Number of violation days

mark only one  
with an x

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      |   |
| quarterly    | X |
| semiannual   |   |
| annual       |   |
| single event |   |

Violation Base Penalty \$3,750

One quarterly event is recommended from the February 3, 2012 investigation date to the April 2, 2012 compliance date.

## Good Faith Efforts to Comply

10.0% Reduction

\$375

|               | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary |            |                               |
| Ordinary      |            | X                             |
| N/A           |            | (mark with x)                 |

Notes The Respondent came into compliance on April 2, 2012.

Violation Subtotal \$3,375

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$132

Violation Final Penalty Total \$3,450

This violation Final Assessed Penalty (adjusted for limits) \$3,450

# Economic Benefit Worksheet

**Respondent** Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

**Case ID No.** 43937

**Reg. Ent. Reference No.** RN104256227

**Media** Edwards Aquifer

**Violation No.** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**

**Item Description** No commas or \$

## Delayed Costs

|                          |          |            |            |      |       |       |
|--------------------------|----------|------------|------------|------|-------|-------|
| Equipment                |          |            | 0.00       | \$0  | \$0   | \$0   |
| Buildings                |          |            | 0.00       | \$0  | \$0   | \$0   |
| Other (as needed)        |          |            | 0.00       | \$0  | \$0   | \$0   |
| Engineering/construction |          |            | 0.00       | \$0  | \$0   | \$0   |
| Land                     |          |            | 0.00       | \$0  | n/a   | \$0   |
| Record Keeping System    |          |            | 0.00       | \$0  | n/a   | \$0   |
| Training/Sampling        |          |            | 0.00       | \$0  | n/a   | \$0   |
| Remediation/Disposal     |          |            | 0.00       | \$0  | n/a   | \$0   |
| Permit Costs             |          |            | 0.00       | \$0  | n/a   | \$0   |
| Other (as needed)        | \$16,354 | 3-Feb-2012 | 2-Apr-2012 | 0.16 | \$132 | \$132 |

## Notes for DELAYED costs

Actual cost provided by the Respondent to develop and implement a Special Features Closure Plan, to use a vacuum truck and manual excavation to remove chipped rock from sensitive features and refill the features with flowable fill material. Date Required is the investigation date and the Final Date is the date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

|                               |  |  |      |     |     |     |
|-------------------------------|--|--|------|-----|-----|-----|
| Disposal                      |  |  | 0.00 | \$0 | \$0 | \$0 |
| Personnel                     |  |  | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  | 0.00 | \$0 | \$0 | \$0 |

## Notes for AVOIDED costs

**Approx. Cost of Compliance**

\$16,354

**TOTAL**

\$132

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603394347 Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd. Classification: AVERAGE Rating: 4.00

Regulated Entity: RN104256227 TUSCANY HEIGHTS UNITS 1 THRU 4 Classification: AVERAGE Site Rating: 6.00

ID Number(s): EDWARDS AQUIFER REGISTRATION 13-04042103  
EDWARDS AQUIFER REGISTRATION 13-04042103A

Location: WEST SIDE OF UNITED STATES HIGHWAYy 281, AND ON THE NORTH SIDE OF MOUNTAIN LODGE ROAD, SAN ANTONIO, BEXAR COUNTY, TEXAS

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: April 12, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 10, 2007 to April 10, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jeremy Escobar Phone: 825-3422

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 

|   |            |          |
|---|------------|----------|
| 1 | 06/19/2009 | (749287) |
| 2 | 03/14/2012 | (989230) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/04/2009 (724681)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.4

Description: Comal Creek Construction's wood grinding operation was causing nuisance conditions.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 332, SubChapter A 332.8(b)(3)

30 TAC Chapter 332, SubChapter A 332.8(b)(4)

Description: Comal Creek Construction was operating a grinder without spray bars or using water to control dust.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.5

Description: On January 13, 2009, construction equipment operated by Legacy Sitework, LLC. in the Tuscany Heights Subdivision was causing a traffic hazard.

Self Report? NO Classification: Moderate

Citation: 5C THSC Chapter 382 382.085(a)

Description: Land Development Solutions has control over the activities that resulted in a nuisance condition and a traffic hazard.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TUSCANY HEIGHTS, LLC FKA  
TUSCANY HEIGHTS PARTNERS,  
LTD.  
RN104256227**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-0774-EAQ-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd. (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a residential development located on the west side of United States Highway 281, and on the north side of Mountain Lodge Road, in San Antonio, Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 17, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nine Thousand Two Hundred Twenty-Five Dollars (\$9,225) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Three Hundred Eighty Dollars (\$7,380) of the administrative penalty and One Thousand Eight Hundred Forty-Five Dollars (\$1,845) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. By January 30, 2012, submitted notifications to the San Antonio Regional Office of the two additional sensitive features discovered on Lot 12;
  - b. On February 3, 2012, ceased operations;
  - c. Received approval of the Special Feature Closure Plans on February 3 and 5, 2012 respectively; and
  - d. By April 2, 2012, used a vacuum truck and manual excavation to remove chipped rock from the sensitive features and refill the features with flowable fill material.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to immediately suspend regulated activities and notify the TCEQ San Antonio Regional Office upon discovery of sensitive features on Lot 12, in violation of 30 TEX. ADMIN. CODE § 213.5(f)(2) and Edwards Aquifer Water Pollution Abatement Plan ("WPAP") No. 13-04042103A, Standard Conditions No. 12, as documented during an investigation conducted on February 3, 2012. Specifically, it was noted that the Respondent did not suspend regulated activities and notify the TCEQ San Antonio Regional Office of the discovery of two additional solution features on Lot 12 on January 20 and 27, 2012 respectively.
2. Failed to implement best management practices and measures to prevent chipped rock from discharging into Sensitive Features Nos. 1 through 4, in violation of 30 TEX. ADMIN. CODE § 213.5(b)(4)(C)(iii) and WPAP No. 13-04042103A, Standard Conditions 2, as documented during an investigation conducted on February 3, 2012.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd., Docket No. 2012-0774-EAQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Pam Davis*  
For the Executive Director

6/5/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Riley Witt*  
Signature

5-22-13  
Date

Riley Witt  
Name (Printed or typed)  
Authorized Representative of  
Tuscany Heights, LLC fka Tuscany Heights Partners, Ltd.

Vice President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.